

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRY ANTHONY BREEDING,

Defendant-Appellant.

---

UNPUBLISHED

January 26, 2010

No. 289225

Oakland Circuit Court

LC No. 2008-219359-FC

Before: K. F. Kelly, P.J., and Hoekstra and Whitbeck, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of four counts of criminal sexual conduct in the first degree (CSC I), MCL 750.520b(1)(a) (sexual penetration of person under 13 years of age), and was sentenced to concurrent terms of 50 to 80 years in prison. Defendant appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

I. Sufficiency of the Evidence

Defendant first argues that the prosecution failed to establish the element of penetration beyond a reasonable doubt because there was no evidence of blood or scarring, and there was evidence of discharge on only one occasion. We disagree. In reviewing the sufficiency of the evidence, we must view the evidence de novo in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). We will not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Passage*, 277 Mich App 175, 177; 743 NW2d 746 (2007).

Here, the victim testified that on five occasions when she was eight and nine years old, defendant penetrated her rectum. She said it hurt each time that defendant assaulted her. Also, she testified that the first time she noticed some "whitish stuff" in her underwear, which she wiped off. She did not notice the substance again. She did not see any blood, but she was sure her rectum had been penetrated. The victim's testimony alone was sufficient to establish the elements of CSC I. The testimony did not have to be corroborated. MCL 750.520h. Her credibility was a factual determination for the jury.

## II. Sentencing

Defendant next takes issue with the extent of the upward departure from the sentencing guidelines. Since the subject crimes occurred in 1997 and 1998, the judicial sentencing guidelines applied. See *People v Reynolds*, 240 Mich App 250, 253; 611 NW2d 316 (2000). The appropriate standard of review is therefore an abuse of discretion. *People v Milbourn*, 435 Mich 630, 634-636; 461 NW2d 1 (1990). “[A] given sentence can be said to constitute an abuse of discretion if that sentence violates the principle of proportionality, which requires sentences imposed by the trial court to be proportionate to the seriousness of the circumstances surrounding the offense and the offender.” *Id.* at 636.

In addition to the crimes at issue, defendant had nine prior adjudications involving criminal sexual conduct with minors. These offenses dated back to when defendant was 14 years old in 1992, and continued at least through 2002. His victims ranged in age from a child in diapers to a child who suffered abuse from the age of three or four until she was 13 years of age. Defendant underwent sexual offender treatment while in a juvenile detention facility, but to no avail. His assaults on children resumed upon his release and continued until his re-incarceration. The trial court concluded that defendant is a sexual predator.

Departures from the judicial sentencing guidelines “are appropriate where the guidelines do not adequately account for important factors legitimately considered at sentencing” or where the recommended range is disproportionate to the seriousness of the crime. *Milbourn, supra* at 657. A trial court has “broad discretion, within limits fixed by law, to tailor a sentence to the circumstances of each case and each offender, in an effort to balance society’s need for protection against its interest in rehabilitation of the offender.” *People v Sabin (On Second Remand)*, 242 Mich App 656, 661; 620 NW2d 19 (2000). Although “the extent of the departure (rather than the fact of the departure itself) may embody a violation of the principle of proportionality,” *Milbourn, supra* at 660, we find no such violation in this case. Given defendant’s history and the fact that his behavior did not change after sexual offender treatment, the trial court’s belief that defendant would offend again if released was not unwarranted. Society’s need for protection outweighed any prospects of rehabilitation. Thus, the extent of the departure, as a means of protecting young children from future abuse, warranted the sentence imposed.

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ Joel P. Hoekstra  
/s/ William C. Whitbeck